



Billing Code 4210-67
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-14]

Guidance and Instructions for Extension Requests of 24-Month Expenditure Deadline for Community Development Block Grant Disaster Recovery (CDBG-DR) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises Community Development Block Grant disaster recovery (CDBG-DR) grantees with grants pursuant to the Disaster Relief Appropriations Act, 2013 (the Appropriations Act) of the process and requirements associated with grantee requests for an extension of the 24-month expenditure deadline for specific portions of funds obligated under the Appropriations Act.

DATES: Effective Date: **[Insert date 5 days from date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) E-mail inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Applicability

II. Background

III. Eligible Activities

IV. Timeline for Submission

V. Requirements for Submission

VI. Submission Process

VII. Criteria for Approval

VIII. Applicable Rules and Considerations

IX. Applicability to National Disaster Resilience Competition and Rebuild by Design Projects

X. Catalog of Federal Domestic Assistance

XI. Finding of No Significant Impact

I. Applicability

The requirements of this Notice are applicable to all CDBG disaster recovery (CDBG-DR) grants funded pursuant to the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved January 29, 2013) and do not apply to any CDBG-DR grants funded pursuant to other supplemental appropriations.

II. Background

The Appropriations Act made available \$16 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et. seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. On March 1, 2013, the President issued a

sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced the amount of funding for CDBG–DR grants under the Appropriations Act to \$15.18 billion. To date, a total of \$15.18 billion has been allocated or set aside: \$13 billion in response to Hurricane Sandy, \$514 million in response to disasters occurring in 2011 or 2012, \$655 million in response to 2013 disasters, and \$1 billion set aside for the National Disaster Resilience Competition.

This Notice establishes submission instructions for expenditure deadline extension requests and other related requirements for grantees in receipt of allocations under the Appropriations Act, which are described within the **Federal Register** Notices published by HUD on March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), March 27, 2014 (79 FR 17173), June 3, 2014 (79 FR 31964), July 11, 2014 (79 FR 40133), October 7, 2014 (79 FR 60490), October 16, 2014 (79 FR 62182), January 8, 2015 (80 FR 1039), and April 2, 2015 (80 FR 17772) referred to collectively in this Notice as the “Prior Notices.” The requirements of the Prior Notices continue to apply, except as modified by this Notice.¹

The Appropriations Act requires HUD to obligate all funds provided under the Appropriations Act by September 30, 2017. The Appropriations Act also requires that grantees expend funds within 24 months of the date on which HUD obligates funds to a grantee. Funds are obligated to a grantee on the date that HUD signs a grantee’s CDBG- DR grant agreement or grant agreement amendment obligating additional funds. Each obligation carries its own

¹ Links to the Prior Notices, the text of the Appropriations Act, and additional guidance prepared by HUD for CDBG–DR grants, are available on the HUD Exchange Web site: <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>

expenditure deadline. For each obligation to a grantee, any funds remaining in the grantee's line of credit from that obligation at the time of the expenditure deadline for that obligation will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. In all instances, grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7), as may be amended, and therefore may not draw down funds in advance of need to attempt to comply with the expenditure deadline in accordance with HUD's long-standing implementation of this requirement.

Section 904(c) of the Appropriations Act authorizes the Office of Management and Budget (OMB) to grant waivers of the 24-month expenditure deadline. To implement this provision of the Appropriations Act, OMB requested Federal agencies receiving an appropriation under the Appropriations Act to identify categories of activities that could be subject to a waiver of the 24-month expenditure deadline. OMB also requested that agencies estimate, for each category of activity, the total amount of funds provided under the Appropriations Act that would likely require a waiver. HUD submitted an analysis of different categories of CDBG-DR activities that would likely necessitate a waiver of the expenditure deadline to OMB. OMB authorized HUD to provide CDBG-DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions.

Although HUD has authority to grant extensions of the 24-month expenditure deadline up to amounts approved by OMB for each of the activity categories described in Section III of this Notice, grantees are advised that 31 U.S.C. 1552(a) continues to apply to funds appropriated under the Appropriations Act. Specifically, CDBG-DR funds are to remain available for expenditure for five years following the period of availability for obligation. All funds under the

Appropriations Act, including those subject to a waiver of the expenditure deadline, must be expended by September 30, 2022. Any grant funds that have not been disbursed by September 30, 2022, will be canceled and will no longer be available for disbursement to the grantee for obligation or expenditure for any purpose.

III. Eligible Activities

The National Disaster Recovery Framework acknowledges that long-term recovery is inherently a multi-year process. HUD recognizes that grantees allocate a significant portion of CDBG-DR funds to complex and large-scale programs and projects that are long-term in nature. HUD also recognizes that grantees will require CDBG-DR administrative funds to conduct grant closeout and engage in ongoing program oversight, and that these efforts will inevitably extend beyond the 24-month expenditure deadline that applies to each obligation.

As authorized by OMB, HUD will limit its consideration of expenditure deadline extension requests to certain types of eligible disaster recovery activities undertaken by grantees. HUD will consider grantee programs and projects within the following four categories for expenditure deadline extensions:

- *Public facilities and improvements.* Typical public facilities and improvement activities include the rehabilitation, replacement, or relocation of damaged public facilities and improvements, as well as investments to increase the resilience of those facilities and improvements.
- *Housing.* Typical housing activities include new construction, elevation, and rehabilitation of single family or multifamily residential units.
- *Economic revitalization.* Economic revitalization activities often include the provision of loans and grants to small businesses, job training programs, the construction of education

facilities to teach technical skills, making improvements to commercial or retail districts, and financing other efforts that attract and retain workers in disaster-impacted communities.

- *Grant administration.* Typical administrative activities include salaries, wages, and related costs of grantee or subrecipient staff and others engaged in program management, monitoring, and evaluation. Administrative costs are limited by the Appropriations Act to five percent of each grantee's total allocation.

IV. Timeline for Submission

The process for any funds that the grantee believes will not be expended by the 24-month expenditure deadline, as outlined in Section III of each of the prior **Federal Register** Notices published by HUD on March 5, 2013 (78 FR 14329), May 29, 2013 (78 FR 32262), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), June 3, 2014 (79 FR 31964), and October 16, 2014 (79 FR 62185), is hereby revised as follows:

“The Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee; and funds are obligated to a grantee upon HUD's signing of a grantee's CDBG–DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the 24-month deadline and that it desires to retain, the grantee must submit an extension request in a form acceptable to HUD not less than 120 calendar days in advance of the date of the expenditure deadline on those funds justifying why it is necessary to extend the deadline for a specific portion of the funds. In consideration of the timeline for

funds with expenditure deadlines in 2015, extension requests for those funds must be submitted to HUD not less than 60 calendar days in advance of the date of the expenditure deadline on those funds. OMB has provided HUD with authority to act on grantee extension requests but grantees are cautioned that such extensions may not be approved. If granted, extensions will be published in the **Federal Register**. Funds remaining in the grantee's line of credit at the time of its expenditure deadlines will be recaptured by HUD.”

V. Requirements for Submission

Grantees seeking an extension of the 24-month deadline for a project or program must provide HUD with detailed information on the compelling legal, policy, or operational challenges that prevent the grantee from meeting the expenditure deadline as well as identify the proposed date for the full expenditure of the specified portion of funds.

To expedite the review process, HUD has developed a CDBG-DR Expenditure Deadline Extension Request template. Grantees must submit one template per program or project for which a revised expenditure deadline is being requested. In certain cases, HUD may request that a grantee resubmit this template at a project-level if information provided at the programmatic level is insufficient for HUD to assess whether the request meets HUD's criteria for approving an extension, as outlined in Section VII below. This template will ensure that each request captures all of the requirements outlined in this Notice. The template will be posted at: <https://www.hudexchange.info/cdbg-dr/>. Each grantee must include the following elements, as delineated within the CDBG-DR Expenditure Deadline Extension Request template, as part of its submission:

(1) A description of the individual program or project for which an extension is being requested, including information on relevant Disaster Recovery Grant Reporting System (DRGR) activity(ies).

(2) An explanation for why an extension is being requested, including all relevant and compelling statutory, regulatory, policy, or operational challenges, and how the extension will promote a more effective and efficient recovery effort.

(3) Description of how the provision of an extension would reduce the likelihood of waste, fraud, and abuse, if applicable.

(4) An identification of all community stakeholders (including state or local entities, subrecipients, nonprofits, and civic organizations) to be affected by the expenditure deadline extension, their role in program or project implementation, and the impact, if any, of the extension on these stakeholders.

(5) A revised expenditure deadline for the CDBG-DR funds budgeted for the program or project (i.e. the DRGR 'end date') as well as a projection of quarterly expenditures for the program or project for which the waiver is requested, including incremental dollar amounts and percentage of funds budgeted for each DRGR activity. This information is required in order for HUD to ensure grantee compliance with revised expenditure deadlines in the DRGR system.

(6) A description of the risks associated with not receiving the requested extension, such as the estimated percentage of funds which would be at risk of recapture or specific recovery needs that would not be met if the particular program or project cannot be completed or undertaken.

(7) A description of the monitoring process and internal controls that the grantee and any subrecipients will implement to ensure compliance with the revised expenditure deadline.

VI. Submission Process

The submission of any grantee expenditure deadline extension request is subject to the following requirements:

- Grantee submits the completed CDBG-DR Expenditure Deadline Extension Request template and any attachments to HUD in order to request consideration of the extension request not less than 120 calendar days in advance of the expenditure deadline on the funds (or 60 days for funds expiring in calendar year 2015).
- HUD reviews the extension request within 45 (or sooner for funds expiring in calendar year 2015) calendar days from date of receipt and approves the request based on the parameters outlined in Section VII of this Notice.
- HUD sends an extension request approval letter to the grantee. HUD may disapprove the request if it is determined that it does not meet the requirements of this Notice. If the request is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the request within 30 calendar days (or 10 days for funds expiring in the calendar year 2015) of the notification letter;
- Within 30 calendar days of HUD's approval, the grantee amends its Action Plan for disaster recovery to reflect the approval of the revised expenditure deadline. HUD considers any Action Plan amendments to reflect revised activity expenditure timelines to be non-substantial amendments.
- Immediately following this amendment, the grantee updates its DRGR Action Plan to reflect the revised 'end date' for each DRGR activity covered by the approved waiver.
- If approved, HUD will publish the extension approval in the **Federal Register**. HUD will consolidate grantee extension approvals for publication. Therefore, extension approval

is effective as of the date of the extension request approval letter, rather than as of the effective date of the published **Federal Register** notice.

VII. Criteria for Approval

Under the authority provided to HUD by OMB, HUD will consider expenditure deadline extension requests for projects or programs based on the Secretary's determination that the extension is necessary and that the request meets the conditions set forth by OMB. HUD will assess extension requests using the following criteria:

(1) The program or project must be approved in the grantee's Action Plan for disaster recovery prior to the grantee's submission of an expenditure deadline extension request to HUD.

(2) The CDBG-DR funds associated with the program or project must have been obligated by HUD through a grant agreement, and, therefore, be subject to an established expenditure deadline.

(3) The information submitted on the CDBG-DR Expenditure Deadline Extension Request template is comprehensive and complete to the satisfaction of HUD, as outlined in Section V of this Notice.

(4) The revised expenditure deadline for the CDBG-DR funds budgeted for the program or project (i.e. the DRGR 'end date') as well as the projection of quarterly expenditures are determined to be achievable based on the grantee's past performance and expenditure rate.

(5) The grantee's capacity to implement monitoring processes and internal controls as outlined by the grantee in the template are sufficient to ensure compliance with the revised expenditure deadline.

(6) The grantee has demonstrated that it has evaluated all reasonable alternatives prior to determining that an extension is the only remaining viable alternative.

(7) HUD can determine, based on the grantee's submission, that the program or project covered by the request satisfies the OMB criteria for activities that are long-term by design, where it is impracticable to expend funds within the 24-month period and achieve program missions, and any other criteria imposed by OMB.

Regardless of the criteria outlined in this section, HUD retains the authority to deny requested extensions or to provide alternative expenditure deadlines to those proposed by grantees.

VIII. Applicable Rules and Considerations

This section of the Notice describes other requirements that grantees should consider prior to requesting an extension of the of the 24-month expenditure deadline for CDBG-DR programs and projects.

1. *Urgent need national objective certification requirements.* In HUD's March 5, 2013 Notice (78 FR 14329), grantees receiving funds under the Appropriations Act were provided a waiver of the certification requirements for the documentation of the urgent need national objective, located at §§ 570.208(c) and 570.483(d), until two years after the date HUD obligates funds to a grantee. Grantees seeking a waiver of the expenditure deadline may simultaneously seek an extension of the urgent need certification waiver. However, a grantee's request for an urgent need waiver must demonstrate to HUD that an extension of the urgent need certification waiver for those funds is necessary for recovery and that that remaining needs remain urgent, despite the passage of time since the disaster. HUD may grant a waiver under the authority provided in the Appropriations Act authorizing the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements

related to fair housing, nondiscrimination, labor standards, and the environment) based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the HCD Act. If approved, the extension of the urgent need certification waiver will only become effective after its publication in in the **Federal Register**.

2. Expenditure deadline extensions are program- and project-specific. Any revised expenditure deadline is specific to the program or project as identified in the approval letter from HUD. Grantees may not reallocate funds with a revised expenditure deadline to other recovery programs or projects without HUD authorization. In order to reallocate such funds, the grantee must request an additional extension through the process described in Section VI of this Notice. Grant balances not used for a program or project that receives an expenditure deadline waiver will be canceled if the expenditure deadline on those funds has passed.

3. Modifications to revised expenditure deadlines. Under limited circumstances and subject to 31 U.S.C. § 1552(a), HUD may authorize grantees to further extend the expenditure deadlines associated with recovery programs and projects. In order to revise the expenditure deadline on these funds, the grantee must request an additional extension through the process described in Section VI of this Notice.

IX. Applicability to National Disaster Resilience Competition and Rebuild by Design Projects

National Disaster Resilience Competition Projects. Projects that are funded under the Notice of Funding Availability (NOFA) for the National Disaster Resilience Competition (NDRC) (FR-5800-N-29) are not subject to the requirements of this Notice. Grantees may

instead request extensions of the 24-month expenditure deadline for those projects pursuant to the requirements of the NOFA, as may be amended.

Rebuild by Design Projects. HUD will also consider extension requests for funds allocated for Rebuild by Design (RBD) Projects, funded under the eligible “Rebuild by Design” activity in Section VII.4.c. of the Notice published on October 16, 2014, subject to any other criteria imposed by OMB. Requests for an extension of the expenditure deadline for RBD Project funds shall be submitted pursuant to the submission process outlined in Section VI of this Notice but instead of submitting the CDBG-DR Expenditure Deadline Extension Request template, grantee submission requests must contain the information required of extension requests under the headline “Expenditure Deadline Waivers” in Appendix E to the NDRC NOFA, as may be amended.

X. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

XI. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD

Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Date: May 4, 2015_____

Harriet Tregoning
Principal Deputy Assistant Secretary for
Community Planning and Development

[FR-5696-N-14]

[FR Doc. 2015-11260 Filed: 5/8/2015 08:45 am; Publication Date: 5/11/2015]